

United States, the Commonwealth of Massachusetts
and Connecticut v. the General Electric Company
(D. Mass.)

Consent Decree

APPENDIX K

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1 ½ Mile Reach Access and Services Agreement

1. WHEREAS this Agreement pertains to the 1 ½ Mile Reach of the Housatonic River as defined in the Consent Decree ("the Consent Decree") to which this Agreement is Appendix K;

2. WHEREAS pursuant to the terms of the Consent Decree, the United States Environmental Protection Agency ("EPA") intends to perform the 1 ½ Mile Reach Removal Action and General Electric Company ("GE") shall pay its share of the costs of the Removal Action in accordance with Section xx of the Consent Decree (Reimbursement of Costs) and perform other activities as specified in the Consent Decree;

3. WHEREAS access and property use restrictions regarding the Site are governed by: (i) Section XIII of the Consent Decree ("Access and Land/Water Use Restrictions"); (ii) the Statement of Work ("SOW"); (iii) environmental restrictions and easements ("EREs") recorded and/or registered in the appropriate Registry of Deeds or Land Registration Office; and (iv) conservation easements and restrictions ("CERs") recorded and/or registered in the appropriate Registry of Deeds or Land Registration Office;

4. WHEREAS access for certain activities, and services to be provided by GE, which are not enumerated in the Access and Land/Water Use provisions of the Consent Decree, SOW, EREs and/or the CERs, are governed by this Agreement;

5. WHEREAS GE and EPA agree that the objective of this Agreement is to grant EPA access to the Site Access & Services Area, certain GE buildings, utilities, and other specified services as set forth below.

NOW THEREFORE, without any admission of liability by GE, nor any acknowledgment by GE that the release or threatened release of hazardous substance(s) at or from the

Site constitutes or may present an imminent or substantial endangerment to the public health or welfare or the environment, EPA and GE agree as follows:

Definitions

6. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in the Consent Decree, the Statement of Work ("SOW") attached to the Consent Decree, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601, et seq., or the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 U.S.C. §§ 6901, et seq., shall have the meaning assigned to them in the Consent Decree, SOW, CERCLA, RCRA, or in the regulations promulgated under CERCLA or RCRA. Whenever terms listed below are used in this Agreement, the following definitions shall apply. For convenience in reading this Agreement, certain terms that are defined in the Consent Decree and/or the SOW are also restated below. The following definitions apply for the time period during which EPA requests access to the particular service or property in question.

"1 ½ Mile Reach" shall mean the section of the East Branch of the Housatonic River and its riverbanks, from Lyman Street to the confluence with the West Branch of the Housatonic River. This term does not include the Actual/Potential Lawns and other non-riverbank portions of the floodplain properties adjacent to this Reach.

"1 ½ Mile Reach Removal Action" shall mean the Removal Action for the 1 ½ Mile Reach to be selected by EPA pursuant to Paragraph 21 of the Consent Decree.

"Consent Decree" shall mean the Consent Decree to -which this Agreement is Appendix K.

"GE Facilities" shall mean any vacant, or the vacant portion of, any building, structure, or trailer owned by GE and located at the Site Access & Services Area.

"GE Infrastructure" shall mean utility, water, groundwater, storm water, or wastewater lines; or piping; or fiber/optic cable; or similar infrastructure, owned by GE at the Site Access & Services Area.

"GE Parking Lots or GE Staging and Storing Areas" shall mean any parking lots or other similar paved areas at the Site Access & Services Area.

"GE Security Measures" shall mean any security measure performed by GE, its contractors, employees, or representatives at the Site Access & Services Area including, but not limited to: maintaining fencing and/or warning signs around buildings, trailers, response action areas, or wastewater treatment plant(s); providing a security guard(s) or other **security measure (s) for** buildings, trailers, response action areas, or wastewater treatment plant(s); and performing other measure(s) which otherwise protect GE owned property and response action work. The term "GE Security Measures" excludes protection of equipment owned by the United States or its contractors.

"On-Plant Consolidation Areas" shall mean the Hill 78 Consolidation Area, the Building 71 Consolidation Area, and a potential consolidation area that may be constructed at the corner of New York Avenue and Merrill Road.

"Site Access & Services Area" shall mean those portions of the following areas which are owned by GE: the GE Plant Area; the Former Oxbow Areas; the Housatonic River Floodplain - Non-Residential Properties; the Silver Lake Area; the Upper ½ Mile Reach; and the 1 ½ Mile Reach; but excluding areas utilized by GE Plastics, Husky Injection Molding Systems, Ltd., General Dynamics, or other tenants, or property designated for transfer to the Pittsfield Economic Development Agency ("PEDA").

"Utility Services" shall mean the supply of electricity, water, heat, telephone, and fiber/optic cable services to the Site Access & Services Area.

"Wastewater Treatment Plants" shall mean any wastewater treatment facility owned by GE and located at the Site Access & Services Area.

Access and Provision of Services

7. Commencing upon the date of entry of the Consent Decree, GE, in consideration of the terms of the Consent Decree, shall provide to EPA, and its employees, agents, authorized representatives, contractors, subcontractors (including, but not limited to the Army Corps of Engineers ("Corps") and its employees, agents, authorized

representatives, contractors, and subcontractors), and all other persons performing the 1 ½ Mile Reach Removal Action under direction of EPA or the Corps, for purposes of designing and implementing the 1 ½ Mile Reach Removal Action, reasonable access to the Site Access & Services Area and specified GE services, as follows:

(a) Access to GE Facilities. GE shall provide access to GE Facilities free of charge, as follows:

(1) Within 10 days of receipt of EPA's request for access to GE Facilities, GE shall either grant such access or shall provide to EPA, in writing, the reasons why GE will not grant such access. GE's grant of access shall not be unreasonably withheld.

(2) In the event that GE denies EPA's request for access to GE Facilities, GE shall, within 10 days of such denial, identify reasonably equivalent GE Facilities, if any, that are available and appropriate. EPA may then request access to alternative GE Facilities. GE's grant of access to alternative GE Facilities shall not be unreasonably withheld.

(b) Access to GE Infrastructure. GE shall provide access to GE Infrastructure free of charge, as follows:

(1) Within 10 days of receipt of EPA's request for access to GE Infrastructure, GE shall either grant such access or shall provide to EPA, in writing, the reasons why GE will not grant such access. GE's grant of access shall not be unreasonably withheld.

(2) In the event that GE denies EPA's request for access to GE Infrastructure, GE shall, within 10 days of such denial, identify reasonably equivalent GE Infrastructure, if any, that are available and appropriate. EPA may then request access to alternative GE Infrastructure. GE's grant of access to alternative GE Infrastructure shall not be unreasonably withheld.

(3) If there is inadequate capacity available for EPA's use of GE infrastructure, and GE and EPA agree that adequate capacity can be made available through minor, cost-effective modifications to such GE Infrastructure, then GE shall make such modifications, and the cost of such modifications shall be a cost of the 1 ½ Mile Reach Removal Action that shall be shared as provided in Paragraph 103 of the Consent Decree.

(4) Following EPA's certification that it has completed the 1 ½ Mile Reach Removal Action, EPA and GE shall evaluate whether any modifications to GE Infrastructure made pursuant to Paragraph 7(b)(3) of this Agreement will be of use or benefit to GE's operations at the GE Plant Area or of use or benefit to GE's tenants at the GE Plant Area and, if such is the case, then EPA and GE will negotiate an appropriate reimbursement by GE to EPA of EPA's share of the cost of such modifications.

(c) Access to GE Parking Lots or GE Staging and Storing Areas. GE shall provide access to GE Parking Lots or GE Staging and Storing Areas free of charge, for parking, storing, or staging vehicles, machinery, heavy equipment, piping, supplies, construction materials, dumpsters and/or trailers; for providing a location for excavated soil and/or sediment from the 1 ½ Mile Reach to drain and dewater upon liners with appropriate containment systems; for constructing a water treatment facility; for housing a water storage tank; and for other purposes related to designing and implementing the 1 ½ Mile Reach Removal Action, as follows:

(1) Within 10 days of receipt of EPA's request for access to GE Parking Lots or GE Staging and Storing Areas, GE shall either grant such access or shall provide to EPA, in writing, the reasons why GE will not grant such access. GE's grant of access shall not be unreasonably withheld. GE may deny such access if the area to which EPA requests access is not structurally sound for EPA's intended use.

(2) In the event that GE denies EPA's request for access to GE Parking Lots or GE Staging and Storing Areas, GE shall, within 10 days of such denial, identify reasonably equivalent GE Parking Lots or GE Staging and Storing Areas, if any, that are available and appropriate. EPA may then request access to alternative GE Parking Lots or GE Staging and Storing Areas. GE's grant of access to alternative GE Parking Lots or GE Staging and Storing Areas shall not be unreasonably withheld.

(d) Access to the On-Plant Consolidation Areas. GE shall provide access to and operation of the On-Plant Consolidation Areas as follows. GE shall provide access to and operation of the On-Plant Consolidation Areas for the purpose of consolidating excavated material from the 1 ½ Mile Reach and other material related to the 1 ½ Mile Reach Removal Action, including, but not limited to personnel protection equipment. GE shall provide such access and operation free of charge; provided, however, that on any day on which GE would not incur costs of spreading and compacting material but for the delivery of material by EPA to an On-Plant Consolidation Area, the costs of spreading and compacting such material in that On-Plant Consolidation Area shall be shared as provided in Paragraph 103 of the Consent Decree. GE shall reserve capacity in the On-Plant Consolidation Areas for 50,000 cubic yards of material, to be allocated as follows: 25,000 cubic yards of non-TSCA material in the Hill 78 Consolidation Area, and 25,000 cubic yards of TSCA or non-TSCA material in the Building 71 Consolidation Area, or as otherwise agreed to by GE and EPA. In the event that EPA disposes, off-Site, additional material from the 1 ½ Mile Reach and other material related to the 1 ½ Mile Reach Removal Action, the cost of such off-Site disposal shall be a cost of the 1 ½ Mile Reach Removal Action that shall be shared as provided in Paragraph 103 of the Consent Decree. In the event that GE fails to make available to EPA the capacity required by this Paragraph, EPA may dispose, off-Site, the material that was to have been disposed of in the On-Plant Consolidation Areas, and the cost of such off-Site disposal

shall be borne solely by GE. Such payment by GE shall cure any alleged violation of this Agreement based on GE's failure to make available to EPA the capacity required by this Paragraph, and GE shall not be liable for stipulated penalties or other sanction based on that failure;

(e) Access to Utility Services. GE shall provide Utility Services subject to existing capacity, free of charge, if the cost to GE is nominal. If the cost to GE is more than nominal, then GE shall, upon EPA's request, arrange to provide necessary Utility Services, and the cost of providing such services shall be a cost of the 1 ½ Mile Reach Removal Action that shall be shared as provided in Paragraph 103 of the Consent Decree;

(f) Access to Wastewater Treatment Plants. GE shall provide access to and operation of GE's Wastewater Treatment Plants free of charge, subject to available capacity and permit conditions. EPA shall comply with such requirements as GE may specify regarding the quantity and quality of wastewater supplied to the Wastewater Treatment Plant so as to assure that such wastewater supplied by EPA will not, when combined with other flow to the Wastewater Treatment Plant, cause or contribute to an exceedance of any applicable discharge limit. (A summary of such requirements is set forth in Attachment 1, hereto.) In the event that wastewater supplied by EPA to the Wastewater Treatment Plant causes or contributes to an exceedance of any applicable discharge limit, GE shall not be liable for civil penalties for such exceedance;

(g) Access to GE Security Measures. GE shall provide GE Security Measures free of charge where GE can provide such Security Measures at minimal or no additional cost: and

(h) Access to any other area owned by GE and located at the Site Access & Services Area necessary for the design and implementation of the 1 ½ Mile Reach Removal Action. GE shall provide access to such other area(s) free of charge, as follows:

(1) Within 10 days of receipt of EPA's request for access to such other area(s), GE shall either grant such access or shall provide to EPA, in writing, the reasons why GE will not grant such access. GE's grant of access shall not be unreasonably withheld.

(2) In the event that GE denies EPA's request for access to such other areas, GE shall, within 10 days of such denial, identify reasonably equivalent areas, if any, that are available and appropriate. EPA may then request access to other areas. GE's grant of access to other areas shall not be unreasonably withheld.

8. Disputes regarding the provision of access, or other obligations under this Agreement, shall be governed by the dispute resolution provisions in the Consent Decree, Section XXIV.

9. EPA will give reasonable notice before accessing GE property as set forth above, or as otherwise agreed to by EPA and GE. Notice in accordance with this Paragraph shall be provided to:

Michael Carroll or Andrew T. Silfer
General Electric Company
100 Woodlawn Avenue
Pittsfield, MA 01201

10. Upon request, GE will certify that GE owns the property to which access is requested under this Agreement.

Parties Bound

11. This Agreement applies to and is binding upon EPA, and its successors, authorized representatives, contractors, subcontractors, and upon GE, and its successors, and assigns. Any change in ownership or corporate status of GE, including but not limited to, any transfer of assets or real or personal property, shall in no way alter GE's responsibilities under this Agreement.

12. At least 30 days prior to the conveyance of any interest in real property owned by GE at the Site Access & Services Area, GE shall give the grantee written notice of this Agreement.

13. At least 30 days prior to the conveyance by GE of any fee interest in real property owned by GE at the Site Access & Services Area, GE shall also give written notice to EPA of the proposed conveyance. Such notice shall include the following:

- (a) the name and address of the grantee;
- (b) a description of the grantee's proposed use of the property or interest therein;
- (c) a certification that the grantee has been provided with copies of this Agreement and advised of GE's obligations under the Consent Decree and SOW applicable to the property to be conveyed;
- (d) the date notice and copies were provided to the grantee; and
- (e) a written agreement signed by the grantee to assume the terms and obligations of GE under this Agreement with respect to the property to be conveyed.

14. In no event shall the transfer by GE of any real property interest owned by GE at the Site Access & Services Area occur unless the grantee agrees, as a part of the agreement to acquire or otherwise obtain an interest in such real property at the Site Access & Services Area, that the grantee will comply with this Agreement to the same extent as GE, including this provision regarding any subsequent transfer of property by the grantee to a subsequent grantee.

Other Obligations and Reservations

15. Nothing in this Agreement shall be construed to relieve GE of its duty to exercise due care with respect to the Waste Materials at the Site, or its duty to comply with all applicable laws and regulations. Moreover, nothing in this Agreement shall be construed to relieve GE of its duty to comply with the provisions of the Consent Decree, SOW, EREs and/or CERS imposed pursuant to the Consent Decree and/or SOW.

16. EPA will exercise its rights under this Agreement in compliance with all applicable federal, state, and local laws and regulations.

17. GE agrees to cooperate with EPA, and all other persons performing the 1 ½ Mile Reach Removal Action at the Site Access & Services Area under EPA oversight, in the implementation of the 1 ½ Mile Reach Removal Action at the Site Access & Services Area. EPA agrees to conduct its activities in the Site Access & Services Area so as not to cause unnecessary interference with GE's existing operations at the GE Plant Area.

18. GE shall provide access pursuant to this Agreement to the persons identified in Paragraph 7 of this Agreement at all reasonable times, provided that such persons comply with GE safety rules as set forth in the SOW. Nothing in this Paragraph shall be construed as a waiver of EPA's access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

19. Prior to entering upon the Site Access & Services Area, EPA shall assure that all contractors retained by EPA, or the Corps, secure, and maintain, for the duration of this Agreement, comprehensive general liability insurance with limits of two million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming GE as an additional insured; provided, however, that EPA shall not be required to name GE as an additional insured if naming GE as an additional insured results in any additional cost to EPA, unless GE in its discretion pays the additional cost. EPA shall provide copies of certificates of insurance to GE upon GE's request.

Stipulated Penalties

20. GE shall be liable for stipulated penalties in the amounts set forth in Paragraph 149(a) of the Consent Decree for failure to comply with the requirements of this Agreement. The procedures relating to stipulated penalties shall be as set forth in Section XXV of the Consent Decree; provided, however, that such stipulated penalties shall only begin to accrue if the issue giving rise to EPA's claim that GE has failed to comply with the requirements of Paragraphs 7 and 17 of this Agreement has been reviewed but not resolved by the Executive Board established pursuant to Paragraph 13(b) (3) of the Consent Decree, and the EPA Regional Administrator notifies GE in writing that GE has failed to comply with this Agreement.

Restoration of Site Access and Services Area

2:. EPA shall promptly repair any damages to GE's property that result from EPA's activities pursuant to this Agreement. In addition, upon completion of its activities under this Agreement, EPA shall restore the Site Access and Services Area to its original condition, other than improvements made to GE Infrastructure under Paragraph 7(b) of this Agreement or with regard to the consolidation of excavated materials pursuant to Paragraph 7(d) of this Agreement. EPA's costs incurred pursuant to this Paragraph 21 shall be costs of the 1 ½ Mile Reach Removal Action that shall be shared as provided in Paragraph 103 of the Consent Decree. Nothing in the Paragraph shall limit Settling Defendant's reservations in Paragraph 181 of the *Consent Decree*.

Spill Reporting

22. In the event of a release or spill of hazardous substances or other materials caused by EPA or its contractor or representative on the Site Access and Services Area, EPA or its contractor or representative shall be responsible for reporting and responding to such release or spill.

Effective Date

23. This Agreement shall take effect upon entry of the Consent Decree.

Termination

24. This Agreement shall terminate upon completion by EPA of the 1 ½ Mile Reach Removal Action.

Attachment 1
Summary of Requirements Applicable to GE Wastewater Treatment Plants

- . Water from GE operations has first priority to the capacity of the treatment plants
- The source of any water discharged to a treatment plant must be consistent with permit conditions.
- Treatment plant 64G is not designed to handle heavy solid loading, free product (LNAPL or DNAPL), high concentration of volatile organic compounds, or dissolved metals.
 - . Pre-analysis (and possibly lab scale treatment simulation) is required at the beginning of each project to assure that water can be effectively treated. Periodic sampling of influent during a project is also recommended.
 - . Water from excavations must pass through a settling tank with underflow and overflow weirs so that there is no visible indication of free product (LNAPL/DNAPL) and only small amount of solids.
 - . Plant currently treats water to remove PCBs, semi-volatile organic compounds (principally PAHs) and low concentrations of volatile organic compounds.
 - . Surfactants (such as from decon operations) can interfere with the flocculation and settling process in the treatment plant and cannot be discharged to the plant.
- . Treatment plant 64T is not permitted for ground water. It is a filtration plant which is designed to remove oil and grease, and suspended solids. It is not designed to remove soluble organic compounds or metals.
 - . Water discharged to 64T must be pumped or drained directly to the influent tank so that it will not bypass treatment in the event of a storm water bypass. This discharge must take place only during dry weather unless approval is obtained to bypass storm water that would otherwise be treated under normal operating conditions.
- Continuous pumping operations must be under GE's control or must be staffed by EPA/contractor representative 24 hrs/day so that flow to the treatment plant can be curtailed in the event of a problem at the treatment plant.
 - Flow data consisting of instantaneous and total flow measurements must be recorded for direct pipe installations.
- . Treatment plant operators must be informed, in advance, of any significant changes in the quantity of water or the rate of discharge to the treatment plant.
- GE must have access to inspect remediation activities discharging water to GE's facilities for the purpose of evaluating water quality.